Supreme Court, U.S.
FILED

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No. _____

In the Supreme Court of the United States

JIMMY D. CARTY,

Petitioner,

v.

CRAIG NELSON, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Due Process Clause of the Fourteenth Amendment, can an individual be involuntarily committed to a State mental hospital without being afforded the opportunity to confront and cross-examine the witnesses against him?

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PETITION FOR A WRIT OF CERTIORARI

Mr. Carty respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion (Pregerson, Circuit Judge) (Appendix, *infra*, ("App.") 1a-24a), filed October 17, 2005, is reported at 426 F.3d 1064. The Ninth Circuit's order (App. 25a-26a), filed December 15, 2005, amending the opinion and denying the parties' petitions for rehearing, is reported at 431 F.3d 1185. The opinion of the United States District Court for the Southern District of California (App. 27a-40a), filed July 31, 2003, is unreported. The California Court of Appeal's opinion (App. 42a-52a), filed May 11, 2000, is unreported. The California Supreme Court's denial of review (App. 41a), is unreported. The California Superior Court's order for commitment (App. 56a-58a), filed June 24, 1999, pursuant to its decision issued from the bench at the commitment hearing (App. 59a-114a), is unreported.

STATEMENT OF JURISDICTION

The Ninth Circuit filed its opinion on October 17, 2005. Both Mr. Carty and the State timely filed respective petitions for rehearing on November 7, 2005. The Ninth Circuit filed an order amending the opinion and denying the parties' rehearing petitions on December 15, 2005. App. 25a-26a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

California's Sexually Violent Predators Act ("SVPA"), Cal. Welf. & Inst. Code §§ 6600-6609.3 (West 1998 & Supp. 1999), is reprinted in full at App. 115a-139a.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides in relevant part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim . . . resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

28 U.S.C. § 2254(d)(1).

STATEMENT OF THE CASE

1. Overview

As Mr. Carty's prison term was coming to an end, the San Diego County District Attorney instituted a civil commitment proceeding against him under California's Sexually Violent Predators Act ("SVPA"), Cal. Welf. & Inst. Code §§ 6600-6609.3 (West 1998 & Supp. 1999). Before the State could institutionalize Mr. Carty under the SVPA, it had the burden of proving several facts beyond a reasonable

doubt, including two or more predicate crimes involving "substantial sexual conduct," which had never been proved or admitted in the underlying criminal prosecution for lewd acts. Under the "*People v. West*" plea bargain offered by the District Attorney, Mr. Carty had admitted to no facts underlying the charges, and the plea could not be used against him in a subsequent civil proceeding.

At the civil commitment hearing, the State elected not to call witnesses to testify subject to confrontation and cross-examination. Instead, the State proffered only documents riddled with multiple levels of hearsay, including a probation report from the sentencing eight years earlier that consisted almost exclusively of the probation officer's summary of a police report, which purported to repeat statements made by fact witnesses. Although the trial court struggled to make sense of the otherwise inadmissible multiple-level hearsay, the court concluded, over Mr. Carty's objection, that it was entitled to make the required factual findings of two predicates crimes involving "substantial sexual conduct" based solely on these out-of-court statements because of certain language in the SVPA allowing documentary evidence, including probation reports, to be used to prove the details of underlying prior offenses. The SVPA was enacted in 1995—four years after Mr. Carty's plea deal and sentencing.

Mr. Carty was civilly committed for a two-year term in a State mental hospital. After exhausting state court remedies, he filed a *pro se* habeas petition in Federal district court, which was denied. Mr. Carty's appeal to the Ninth Circuit squarely presented the question whether, under the Due Process Clause of the Fourteenth Amendment, a citizen has the right to confront and cross-examine witnesses when the State seeks to deprive him of his liberty in a civil commitment